

# EXHIBIT G

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF HAWAII

3 WAYNE BERRY, a Hawaii citizen, ) CV 03-00385 SOM-LEK  
4 )  
5 Plaintiff, ) Honolulu, Hawaii  
6 vs. ) January 20, 2006  
7 ) 2:00 P.M.  
8 HAWAII EXPRESS SERVICE, INC., )  
9 a California corporation, ) Motions in Limine  
10 et al., )  
11 )  
12 Defendants. )  
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10 TRANSCRIPT OF PROCEEDINGS  
11 BEFORE THE HONORABLE SUSAN OKI MOLLWAY  
12 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

13 For the Plaintiff: TIMOTHY J. HOGAN, ESQ.  
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& Hirota  
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17 For the Defendant ERIC C. LIEBELER, ESQ.  
Fleming Companies, Inc.: DAMIAN D. CAPOZZOLA, ESQ.  
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20 For the Defendants LEX R. SMITH, ESQ.  
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24 For the Defendants LYLE S. HOSODA, ESQ.  
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1 APPEARANCES (Continued):

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25 Proceedings recorded by machine shorthand, transcript  
produced with computer-aided transcription (CAT).

1 MR. CAPOZZOLA: Okay.

2 THE COURT: So I'm going to deny this motion,  
3 but again, of course, this is with the thought that there  
4 may well be specific objections that I may well sustain to  
5 specific questions either respecting the interrogatory  
6 answers or respecting going beyond his personal knowledge  
7 or, you know, going into expert opinion. But -- so  
8 without prejudice to such objections.

9 Okay. I'm then looking at PCT's motion in  
10 limine number 2, which is to exclude Thomas Ueno.

11 Although I did have a number of concerns and I  
12 express those in my earlier order in October about  
13 Mr. Ueno, that was in a summary judgment context. Right  
14 now, you know, having studied this and this was the most  
15 serious of the motions, I thought, I'm inclined to deny  
16 this motion.

17 I think even though I serve as a gatekeeper,  
18 certainly under Daubert and Kumho Tire on expert witness  
19 opinions being admissible, at the same time, you know,  
20 there are many things that I think are best left for  
21 cross-examination, and I see that Mr. Ueno's testimony can  
22 well be tested effectively.

23 One of the things that is raised in the motion  
24 is the concern that he said, "Well, this must be a very  
25 valuable piece of software because, after all, Fleming

1 kept using it, even though Fleming, of course, had  
2 eventually stopped." But it is still the case -- it is  
3 undisputed -- that Fleming was using it at the time in  
4 issue for this damages trial.

5 Mr. Ueno also talked about the program being  
6 feature rich, and in my earlier order I said, "Well, that  
7 alone doesn't make this an indispensable tool." At the  
8 same time there may well be features that make this  
9 valuable. I don't think that my statements in my orders  
10 negate that.

11 And so I am inclined to deny the motion.

12 Now, I realize that there's a fight about a  
13 supplemental opinion that Mr. Ueno gave, but, as I  
14 understand it, that was in light of some late produced  
15 documents, and so my inclination is to allow that, too.

16 Who's going to argue?

17 MR. CAPOZZOLA: I will, Your Honor. First off,  
18 with regard to the supplemental report and the allegedly  
19 late-produced documents, Mr. Hogan had those documents by  
20 mid September. So there's no reason that Mr. Ueno should  
21 be filing and Mr. Hogan then filing supplemental reports  
22 from Mr. Ueno on December 27th with the rest of the  
23 exhibits.

24 Additionally, we would like a deposition of  
25 Mr. Ueno on the supplemental report. If the court is

1 inclined to allow depositions of Mr. Borja, we should have  
2 fair play in that regard. And, additionally, we would ask  
3 the court to just simply exclude any opinions based on  
4 that supplemental report since it was late filed and he  
5 had the documents for many, many months, but at a minimum  
6 we should get a deposition.

7 THE COURT: I'm inclined to let them have a  
8 deposition.

9 MR. HOGAN: Your Honor, just so I understand, I  
10 want to make clear that his report actually lowered our  
11 numbers, and so, if they want to do that, I mean it was  
12 just we didn't have the actual documents. And they've  
13 already said we had a half a terabyte of stuff, Your  
14 Honor. That's 500 gigabytes of material that I got in  
15 late September after they'd given it to their expert in  
16 July. So I just didn't want the court to think I was  
17 sandbagging, Your Honor. This was not an easy case to get  
18 at the stuff.

19 THE COURT: I'm going to stick with this. This  
20 motion to exclude Mr. Ueno's testimony is denied, but  
21 Mr. Ueno must be made available for a deposition by the  
22 defense with respect to his December 2005 supplemental  
23 opinion.

24 I'm not really certain when you folks are going  
25 to be taking all these depositions.

1 MR. HOGAN: Thank you, Your Honor.

2 THE COURT: Now, then I'm looking at PCT's  
3 motion in limine number 3 to exclude reference to certain  
4 testimony by Mark Dillon.

5 My inclination is to deny this particular motion  
6 and allow that Dillon testimony to be the subject of  
7 cross-examination. But, you know, I mean what's so bad  
8 about letting Mr. Berry raise this? I've already put in  
9 my order that I don't think this Dillon testimony gets him  
10 very far; so, you know -- I'm inclined, though, to let him  
11 do it and ask the jury to draw such inferences as he  
12 thinks may be reasonable. Although, I don't think those  
13 inferences are all that great myself, but I was inclined  
14 to leave that to the jury.

15 MR. CAPOZZOLA: Damian Capozzola again. I  
16 understand that you may, after having been living this  
17 case for as long as you have, appreciate the difference  
18 between "We needed the spreadsheets" and "We needed  
19 Berry's software." We are concerned that it will be  
20 highly prejudicial if Mr. Berry is entitled to run what  
21 would essentially be a trick and contort that piece of  
22 testimony to try to mean that we needed Berry's software.  
23 That's how he tries to use that statement from Mr. Dillon.  
24 What Mr. Dillon said was in so many words without the  
25 spreadsheets it would be very difficult or impossible to

1 COURT REPORTER'S CERTIFICATE

2 I, Debra Kekuna Chun, Official Court Reporter,  
3 United States District Court, District of Hawaii, do  
4 hereby certify that the foregoing is a correct transcript  
5 from the record of proceedings in the above-entitled  
6 matter.

7 DATED at Honolulu, Hawaii, January 21, 2006.

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/s/ Debra Chun

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DEBRA KEKUNA CHUN

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RPR, CRR

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